

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

| | |
|--|--|
| <p style="text-align: center;">Plaintiff/Petitioner - Appellant,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">Defendant/Respondent - Appellee.</p> | <p>Case No. _____</p> <p><input type="checkbox"/> Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (Part A)</p> <p><input type="checkbox"/> Application for Certificate of of Appealability</p> <p><input type="checkbox"/> Appellant/Petitioner's Opening Brief (Part B)</p> |
|--|--|

PART A
NOTICE AND INSTRUCTIONS

Your motion for leave to proceed on appeal without prepayment of costs or fees and application for a certificate of appealability will be evaluated by the court using these standards:

I, _____, the petitioner/appellant
in the captioned case move this court for leave to proceed in forma pauperis.

In support of this motion, I state that because of my poverty, I am unable to pay the costs of said proceedings or give security therefor, I submit the attached financial declaration.

Certificate of Appealability. There must be a substantial showing of the denial of a constitutional right by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. 28 U.S.C. § 2253 (c); *Lennox v. Evans*, 87 F.3d 431 (10th Cir. 1996).

FAILURE TO SET FORTH FACTS AND ARGUMENTS SHOWING THAT YOU MEET THE APPROPRIATE STANDARD WILL SUBJECT YOUR APPEAL TO DISMISSAL WITHOUT FURTHER NOTICE.

You may use Part A of this form to furnish a statement of the case, the issues you intend to raise on appeal, and the reasons your appeal meets the applicable standards. The form is intended to guide you in meeting the above standards. If you need more space to answer, additional pages may be attached. The information you furnish, together with the full record of the proceedings in the district court, will be the basis for this court's decision. You should bear in mind that an appeal is not a retrial, but rather a **review** of the district court's judgment and record of proceedings.

APPLICATION AND/OR MOTION

1. Statement of the Case. (This should be a brief summary of the proceedings in the district court.)

2. Issues to be Raised on Appeal. (New issues raised for the first time on appeal generally will not be considered.)

3. Summary of Your Argument Showing that Your Appeal Meets the Appropriate Standards.

4. Do you think the district court applied the wrong law? If so, what law do you want applied?

5. Did the district court incorrectly decide the facts? If so, what facts?

6. Did the district court fail to consider important grounds for relief? If so, what grounds?

7. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?

8. What action do you want this court to take in your case?

9. Were you required to seek and exhaust administrative remedies prior to filing your claim in district court? If yes, what steps did you take to exhaust those remedies?

Date

Signature

FINANCIAL DECLARATION

Affidavit in Support of Motion to Proceed on Appeal in Forma Pauperis

I swear or affirm under penalty of perjury that because of my poverty I am unable to pay the docket fees of my appeal or to post a bond for them. I believe I am entitled to a different result than that reached in the district court.

I further swear or affirm under penalty of perjury that the responses which I have made to the questions and instructions below relating to my ability to pay the fees for my appeal are true.

Instructions. Please complete all questions in this application and then sign it on the last page. If the answer to any question is "0" or "none," or the question is "not applicable", so indicate by writing "0", "none", or "not applicable (N/A)". If additional space is needed to answer any question or to explain your answer to any question, please use and attach a separate sheet of paper identified with your name, the docket number of your case and the number of the question.

1. Are you or your spouse currently employed? Yes _____ No _____
2. If you or your spouse are currently employed, state the name and address of your employer, the length of your employment with that employer, and your monthly gross pay. Gross pay is pay before any taxes or other deductions are taken. If you have more than one employer, please provide the information requested below about the other employer(s) on a separate sheet of paper and attach it to this application.

Yourself:

Your Spouse:

Name and Address of Employer

Name and Address of Employer

Length of Employment

Length of Employment

Years Months

Years Months

Monthly Gross Pay \$

Monthly Gross Pay \$

3. If you are currently unemployed, state the date of your last employment and your monthly gross pay during your last month of employment. Gross pay is pay before any taxes or other deductions are taken.

Date of last employment (Month/Year) for yourself ; spouse

Monthly gross pay during last month of employment \$

4. State whether you or your spouse have received money from any of the following sources during the past twelve months, and, if so, the average monthly amount from that source. Adjust any money that was received weekly, bi-weekly, quarterly, semi-annually, or annually to show the monthly rate.

Did you receive money from any of the following sources during the past 12 months?

Average monthly amount during past 12 months for you and your spouse if applicable.

Amount expected next month

| | | You | Spouse | You | Spouse |
|---|-----------------|----------------------|----------------------|----------------------|----------------------|
| Self-employment | Y/N <u> </u> | \$ <u> </u> | \$ <u> </u> | \$ <u> </u> | \$ <u> </u> |
| Income from real property (such as rental income) | Y/N <u> </u> | \$ <u> </u> | \$ <u> </u> | \$ <u> </u> | \$ <u> </u> |
| Interest and dividends | Y/N <u> </u> | \$ <u> </u> | \$ <u> </u> | \$ <u> </u> | \$ <u> </u> |

| | | | | | |
|---|----------|---------|---------|---------|---------|
| Gifts | Y/N ____ | \$ ____ | \$ ____ | \$ ____ | \$ ____ |
| Alimony | Y/N ____ | \$ ____ | \$ ____ | \$ ____ | \$ ____ |
| Child Support | Y/N ____ | \$ ____ | \$ ____ | \$ ____ | \$ ____ |
| Retirement income from sources such as social security, private pensions, annuities, or insurance policies | Y/N ____ | \$ ____ | \$ ____ | \$ ____ | \$ ____ |
| Disability payments such as social security, other state or federal government, or insurance payments | Y/N ____ | \$ ____ | \$ ____ | \$ ____ | \$ ____ |
| Unemployment payments | Y/N ____ | \$ ____ | \$ ____ | \$ ____ | \$ ____ |
| Public assistance payments such as welfare payments | Y/N ____ | \$ ____ | \$ ____ | \$ ____ | \$ ____ |
| Other sources of money (specify: _____) | Y/N ____ | \$ ____ | \$ ____ | \$ ____ | \$ ____ |
| TOTAL | | | \$ ____ | \$ ____ | \$ ____ |

5. State the amount of cash you and your spouse have: \$ _____

State below any money you or your spouse have in savings, checking, or other accounts in a bank or other financial institution.

| Bank or Other Financial Institution: | Type of Account such as savings, checking, or CD: | Amount you have: | Amount your spouse has: |
|--------------------------------------|---|---------------------|----------------------------|
| _____ | _____ | \$ _____ | \$ _____ |
| _____ | _____ | \$ _____ | \$ _____ |
| _____ | _____ | \$ _____ | \$ _____ |

6. State below the assets owned by you and your spouse. **Do not list ordinary household furnishings and clothing.**

| | | |
|----------------------|--------------------|------------------------------|
| Home | Address: _____ | Value: \$ _____ |
| | _____ | Amount owed on mortgages and |
| | _____ | liens: \$ _____ |
| Other real | Address: _____ | Value: \$ _____ |
| estate | _____ | Amount owed on mortgages and |
| | _____ | liens: \$ _____ |
| Motor vehicle | Model/Year: _____ | Value: \$ _____ |
| | _____ | Amount owed: \$ _____ |
| Motor vehicle | Model/Year: _____ | Value: \$ _____ |
| | _____ | Amount owed: \$ _____ |
| Other | Description: _____ | Value: \$ _____ |
| | _____ | Amount owed: \$ _____ |

7. State below any person, business, organization, or governmental unit that owes you or your spouse money and the amount that is owed.

| Name of Person, Business, or Organization that Owes You or Your Spouse Money | Amount Owed You: | Amount Owed Your Spouse: |
|---|---------------------|-----------------------------|
| _____ | \$ _____ | \$ _____ |
| _____ | \$ _____ | \$ _____ |

8. State the individuals who rely on you and your spouse for support. Indicate their relationship to you, their age, and whether they live with you.

| Name | Relationship | Age | Does this person live with you? | |
|-------|--------------|-------|------------------------------------|----------|
| _____ | _____ | _____ | Yes _____ | No _____ |
| _____ | _____ | _____ | Yes _____ | No _____ |
| _____ | _____ | _____ | Yes _____ | No _____ |
| _____ | _____ | _____ | Yes _____ | No _____ |

9. Complete this question by estimating the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, bi-weekly, quarterly, semi-annually, or annually to show the monthly rate.

| | You | Spouse |
|--|----------|----------|
| Rent or home mortgage payment (include lot rented for mobile home) | \$ _____ | \$ _____ |
| Are real estate taxes included? Yes _____ No _____ | | |
| Is property insurance included? Yes _____ No _____ | | |

| | | |
|---|----------|----------|
| Utilities: Electricity and heating fuel | \$ _____ | \$ _____ |
| Water and sewer | \$ _____ | \$ _____ |
| Telephone | \$ _____ | \$ _____ |
| Other _____ | \$ _____ | \$ _____ |
| Home maintenance (Repairs and upkeep) | \$ _____ | \$ _____ |
| Food | \$ _____ | \$ _____ |
| Clothing | \$ _____ | \$ _____ |
| Laundry and dry cleaning | \$ _____ | \$ _____ |
| Medical and dental expenses | \$ _____ | \$ _____ |
| Transportation (not including car payments) | \$ _____ | \$ _____ |
| Recreation, clubs and entertainment, newspapers, magazines, etc. | \$ _____ | \$ _____ |
| Charitable contributions | \$ _____ | \$ _____ |
| Insurance (not deducted from wages or included in home mortgage payments) | | |
| Homeowner's or renter's | \$ _____ | \$ _____ |
| Life | \$ _____ | \$ _____ |
| Health | \$ _____ | \$ _____ |
| Auto | \$ _____ | \$ _____ |
| Other _____ | \$ _____ | \$ _____ |
| Taxes (not deducted from wages or included in home mortgage payments) (specify) _____ | | \$ _____ |
| Installment payments | | |
| Auto: | \$ _____ | \$ _____ |
| Credit Card: (name) _____ | \$ _____ | \$ _____ |
| Department Store: (name) _____ | \$ _____ | \$ _____ |
| Other _____ | \$ _____ | \$ _____ |

| | | |
|--|--------------|--------------|
| Other _____ | \$ _____ | \$ _____ |
| Alimony, maintenance, and support paid to others | \$ _____ | \$ _____ |
| Payments for support of additional dependents not living at your home | \$ _____ | \$ _____ |
| Regular expenses from operation of business, profession, or farm (attach detailed statement) | \$ _____ | \$ _____ |
| Other _____ | \$ _____ | \$ _____ |
| TOTAL MONTHLY EXPENSES | \$ _____ | \$ _____ |

10. Do you expect any major changes to your monthly income or expenses during the next four months? Yes _____ No _____

If yes, describe.

11. Have you paid an attorney any money for services in connection with this case, including the completion of this form? Yes _____ No _____

If yes, how much? \$ _____

If yes, provide the name, address, and telephone number of the attorney:

Have you promised to pay or do you anticipate paying an attorney any money for services in connection with this case, including the completion of this form? Yes _____ No _____

If yes, how much? \$ _____

If yes, provide the name, address, and telephone number of the attorney:

12. Have you paid anyone other than an attorney (such as a paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form? Yes _____ No _____

If yes, how much? \$ _____

If yes, provide the name, address, and telephone number of the person or service:

13. Have you promised to pay or do you anticipate paying anyone other than an attorney (such as a paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form? Yes _____ No _____

If yes, how much? \$ _____

If yes, provide the name, address, and telephone number of the person or service:

14. How much can you pay each month toward the docket fee for your appeal.

\$ _____

15. Please provide any other information that helps to explain why you are unable to pay the docket fees for your appeal.

16. State the address of your legal residence:

Your daytime phone number:

() _____

Your age: _____

Years of schooling: _____

Your social security number:

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C. § 1746, 18 U.S.C. § 1621.

Date: _____ Signature: _____

PART B

NOTICE AND INSTRUCTIONS

The court will accept a properly completed Part B of Form A-11 in lieu of a formal brief. This form is intended to guide you in presenting your appellate issues and arguments to the court. If you need more space, additional pages may be attached. A short statement of each issue presented for review should precede your argument. Citations to legal authority may also be included. This brief should fully set forth all of the arguments that you wish the court to consider in connection with this case.

New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court. A copy of the completed form must be served on all opposing counsel and on all unrepresented parties and a proper certificate of service furnished to this court. A form certificate is attached.

APPELLANT/PETITIONER'S OPENING BRIEF

- 1. Statement of the Case.** (This should be a brief summary of the proceedings in the district court.)

2. Statement of Facts Relevant to the Issues Presented for Review.

3. Statement of Issues.

a. First Issue:

Argument and Authorities:

b. Second Issue:

Argument and Authorities:

4. Do you think the court should hear oral argument in this case? If so, why?

Date

Signature

Please note: If the brief exceeds 30 pages, a certificate of compliance must accompany brief. *See Fed. R. App. P. 32.7(a)(7)(C)*

CERTIFICATE OF SERVICE

I hereby certify that on _____ I mailed a copy of
(date)

the:

(check applicable boxes)

☐

**Motion for Leave to Proceed on Appeal Without
Prepayment of Costs or Fees**

☐

Application for Certificate of Appealability

☐

Appellant/Petitioner's Opening Brief

to _____, at _____,

the last known address, by United States mail or courier.

Date

Signature